

NOAA Policy on Prohibited and Approved Uses of the Asset Forfeiture Fund

Strong management and oversight of the Asset Forfeiture Fund (AFF) is essential to ensuring the public's trust in the National Oceanic and Atmospheric Administration's (NOAA) Enforcement Program. While the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) provides broad statutory authority for use of the AFF,¹ the Department of Commerce and NOAA are implementing this policy limiting approved uses as a means of ensuring no conflict of interest – real or perceived – is associated with the use of the AFF while continuing to promote a sound enforcement program dedicated to conserving and protecting our Nation's marine resources. To this end, the policy provides guidance on the prohibited and approved uses of the AFF that are consistent with but narrower than that authorized under applicable legal authorities. The AFF will also be used for compliance assistance activities, consistent with legal authorities, to better serve the needs of our stakeholders and improve the way NOAA engages and interacts with its regulated community.

The Department believes, as did Congress in establishing the AFF and specifying the authorized uses, that it is appropriate to use the proceeds of NOAA's enforcement program to offset in part the costs of administering that program. Those who violate these laws should help offset the cost of protecting our marine resources in lieu of those costs being borne by taxpayers. Further, the availability of these funds for enforcement reduces the requirement for additional appropriations and expands NOAA's ability to respond to violations of the laws it is charged with enforcing.

To ensure accountability and transparency in AFF accounting, NOAA has taken a number of actions to improve oversight, management, and tracking of the AFF in addition to this policy. NOAA has identified and is tracking AFF monies received and expended, and has centralized the AFF approval processes for expenditures. In the FY 2012 budget submission, NOAA will identify and account for the AFF in its annual budget. For FY 2011, an annual operating budget has been developed for the AFF based upon this policy, and modifications to that budget must be approved by the NOAA Chief Financial Officer.

This policy specifically applies only to funding derived from fines, penalties, and property forfeitures associated with violations of marine resource laws (Magnuson-Stevens Act, Endangered Species Act, Marine Mammal Protection Act, and Lacey Act, among others) and expended by NOAA's enforcement program (OLE and GCEL) under Section 311(e)(1)(A)-(F) and 311(f)(4) of the Magnuson-Stevens Act.² NOAA has established detailed accounting

¹ Memorandum from Cameron F. Kerry, Commerce Department General Counsel, and Lois Schiffer, NOAA General Counsel, *Legal Opinion Regarding Collection and Use of Fines, Penalties, and Forfeiture Proceeds Pursuant to Section 311(e)(1) of the Magnuson-Stevens, Fishery Conservation and Management Act* (Feb. 28, 2011).

² This policy does not address certain proceeds collected and disbursed pursuant to 16 U.S.C. § 973o (South Pacific Tuna Act), 16 U.S.C. § 1437(f)(1)(C) (National Marine Sanctuaries Act), and 16 U.S.C. § 1824(e)(8) (governing the

measures to track receipts and control expenditures under these authorities. In particular, NOAA has established separate budget codes to segregate fines and penalties collected under Section 311(f)(4) (for violations of the Northeast Multispecies Fishery Management Plan) within the larger AFF to ensure those funds are expended in New England and subject to the provisions of this policy.

NOAA's Office of Law Enforcement's (OLE) National Enforcement Operations Manual and the Office of the General Counsel for Enforcement and Litigation's (GCEL) Operating Procedures Manual will include the new policy and any additional guidance.

Prohibited Uses

The policy prohibits the use of the AFF for the following activities:

- Funding for any NOAA employee labor, benefits, or awards;
- Funding for any vehicle purchases or leases, including patrol vehicles, undercover vehicles, all terrain vehicles, vehicles assigned to agents to carry out their enforcement duties, or associated equipment, upgrades, modification, or maintenance of current vehicles;
- Funding for any vessel purchases or leases, including patrol vessels, undercover vessels, or associated equipment upgrades, modification, or maintenance of current vessels;
- Funding for any domestic or foreign travel that is not related to specific investigations, enforcement proceedings, or required training, such as attendance at general conferences or seminars, except as specifically authorized below;
- Funding for any training that is not specifically required by policy as an integral part of an employee's job as detailed below; and
- Funding for the purchase of any equipment that is not directly related to a specific investigation or enforcement proceeding, including weapons and ammunition, uniforms, copiers or facsimile machines, desktop or laptop computers, Blackberries or other PDAs, cell phones or radios, video or audio recording equipment, or office furniture.

Approved Uses

The policy approves the use of the AFF for certain specific enforcement-related activities:

- Compliance assistance as discussed further below;
- Costs directly related to the proper storage of seized fish, vessels, or other property during a civil or criminal proceeding;
- Rewards of not less than 20 percent of the penalty collected or \$20,000, whichever is the lesser amount, for information related to enforcement actions;
- Valid liens, mortgages, and claims against, or interest in, seized or forfeited property;
- Reimbursement to other Federal or State agencies for enforcement related services provided pursuant to an agreement entered into with NOAA;

Western Pacific Insular Areas). Those proceeds are segregated from the AFF and subject to the specific uses detailed in those statutory provisions.

- Expenditures directly related to specific investigations and enforcement proceedings; such as travel specific to an individual investigation or individual case or enforcement proceeding, interviewing expert witnesses, witness participation at trials, hearings or depositions, expert witness fees, case support contracts, forensic examinations, or required forensic or evidence handling supplies;
- Attendance at international and domestic bi- or multi-lateral meetings and negotiations to discuss enforcement specific agenda items;
- Training and associated travel required by policy for all enforcement personnel, mandatory courses at the Federal Law Enforcement Training Center and required field training assignments;
- Annual in-service or national training for OLE and GCEL employees;
- Training for Federal and State partners regarding Federal statutes and regulations under NOAA's authorities;
- Enforcement unique information technology infrastructure, including hardware, software and maintenance, required specifically for NOAA's enforcement and legal systems and databases;
- Interagency agreement and contract costs for the administrative adjudication process, including Administrative Law Judges;
- Costs associated with review of past enforcement actions in the aggregate (e.g. hiring a third party to review past investigations and enforcement proceedings conducted by NOAA);
- Efforts to combat international unregulated and unreported fishing through annual funding to the International Monitoring, Control, and Surveillance Network ; and,
- Costs related to independent audits of the fund to ensure proper collection and use of fines, penalties, and forfeiture proceeds.

Compliance Assistance

The Department is implementing activities to better serve the needs of its stakeholders and improve the way NOAA engages and interacts with its regulated community. This new component is aimed at improving and expanding NOAA's compliance assistance, collaboration, and outreach activities. Activities funded from the AFF may include, but are not limited to:

- Regional enforcement workshops and training sessions to bring together and educate stakeholders on regulations and other requirements associated with fishery management plans, National Marine Sanctuaries, and activities related to the protection of endangered species and marine mammals;
- Educating and involving fishermen in the development of potential solutions to regional and national enforcement-related issues; and
- Improving communication with regulated communities and the general public relative to enforcement issues through increased OLE and GCEL participation in Regional Fishery Management Council meetings or Sanctuary Advisory Committee meetings, improved websites, easy to understand compliance guides, and timely electronic or other notifications of changes in regulations.

Consistent with Section 311(e)(1)(F), these compliance assistance activities would likely be funded by the AFF through agreements with Federal and State partners, or in the case of efforts addressing Northeast Multispecies specifically, through enforcement proceeds available to the Secretary under Section 311(f)(4) of the Magnuson-Stevens Act.